

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID MCNAIR,

Plaintiff,

v.

COLLIN PRATT,

Defendant.

Case No. 1:20-cv-63

HON. JANET T. NEFF

OPINION AND ORDER

This is a prison civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant filed a motion for summary judgment (ECF No. 47). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that Defendant's motion be denied (ECF No. 52). The matter is presently before the Court on Defendant's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Defendant makes two objections. First, Defendant argues that the Magistrate Judge erred in determining that genuine issues of material fact exist even though the Magistrate Judge found that "[Plaintiff] does not dispute [Defendant's] recitation of facts" (ECF No. 52 at PageID.372). Defendant takes that one sentence out of context. Although Plaintiff may not have directly disputed Defendant's recitation of facts, he provided additional facts that demonstrate a genuine

issue of material fact exist. The Magistrate Judge clearly lays out those disputed facts in the R&R—specifically that Defendant told Plaintiff he was going to make him “kiss the concrete” before slamming him on his head and that the MDOC found Defendant guilty “for use of force.” The Court discerns no error in the Magistrate Judge’s analysis.

Second, Defendant argues that the Magistrate Judge erred in failing to consider whether Plaintiff satisfied his burden of proving a clearly established right or waived the argument. The Magistrate Judge did not err in finding that questions of fact prevent the Court from finding that Defendant’s alleged conduct violated clearly established law. In his summary judgment response, Plaintiff cited *Whitley v. Albers*, 475 US 312, 320-21 (1986), where the Court reiterated that this type of Eighth Amendment claim turns on “whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” That issue remains unresolved in this case.

In sum, Defendant’s arguments fail to demonstrate any factual or legal error in the Magistrate Judge’s analysis or conclusion.

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 53) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 52) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 47) is DENIED.

Dated: March 31, 2024

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge